

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

WINSTON L. SPENCE, JR.,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:20-CV-163
(GROH)**

**CITY OF MARTINSBURG WV,
MARTINSBURG POLICE DEPARTMENT,
CHIEF MAURY RICHARDS, in his individual
capacity and official capacity as an officer
of the Martinsburg Police Department,
PATROLMAN N. COOK, in his individual
capacity and official capacity as an
officer of the Martinsburg Police Department,
JOHN DOE(S) 1–3, in their individual capacity
and official capacity as officers of the
Martinsburg Police Department.**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 7. Pursuant to this Court’s Local Rules and 28 U.S.C. § 1915(e)(2)(B), this action was referred to Magistrate Judge Trumble for a preliminary review to determine whether the Plaintiff’s Complaint set forth any viable claims. ECF No. 5. On December 10, 2020, Magistrate Judge Trumble issued his R&R, recommending that the complaint be dismissed. ECF No. 7. Magistrate Judge Trumble further recommends that the Plaintiff’s Motion for Leave to Proceed in Forma Pauperis [ECF No. 2] be denied as moot.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to conduct a *de novo* review of those portions of the magistrate judge’s findings to which objection is made.

However, this Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge to which no objection is made. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file objections in a timely manner constitutes a waiver of *de novo* review and a plaintiff's right to appeal this Court's order. 28.U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Moreover, "[w]hen a party does make objections, but these objections are so general or conclusory that they fail to direct the district court to any specific error by the magistrate judge, *de novo* review is unnecessary." Green v. Rubenstein, 644 F. Supp. 2d 723, 730 (S.D. W. Va. 2009) (citing Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982)).

Objections to Magistrate Judge Trumble's R&R were due within fourteen days after being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The R&R was mailed to the Plaintiff by certified mail, return receipt requested, and according to the United States Postal Service's website, it was delivered on December January 19, 2021. To date, the Plaintiff has not filed objections to the R&R. Thus, this Court will review the R&R for clear error.

In his R&R, Magistrate Judge Trumble found that the Plaintiff has failed to state a claim upon which relief can be granted. Upon careful review, and finding no error of fact or law, the Court **ORDERS** that Magistrate Judge Trumble's Report and Recommendation [ECF No. 7] is **ADOPTED** for the reasons more fully stated therein. The Plaintiff's Complaint [ECF No. 1] is **DISMISSED WITH PREJUDICE** as to **Defendant Martinsburg Police Department** and **DISMISSED WITHOUT PREJUDICE** as to **Defendants City of Martinsburg, Chief Maury Richards, Patrolman N. Cook, and**

John Doe(s) 1–3. The Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* is **DENIED AS MOOT**. ECF No. 2

The Clerk of Court is **DIRECTED** to **STRIKE** this case from the Court's active docket. The Clerk is further **DIRECTED** to mail a copy of this Order to the *pro se* Plaintiff by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: February 17, 2021



GINA M. GROH
CHIEF UNITED STATES DISTRICT JUDGE